

October 23, 2017

Via Hand Delivery

Kevin Holzmeister
Air Blown Concrete, Inc.
601 W. Delano Street
Elverta, CA 95626

James C. Hazen
Agent for Service of Process
Air Blown Concrete, Inc.
180 Promenade Circle Ste 250
Sacramento, CA 95834

**Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Air Blown Concrete, Inc.:

The California Environmental Protection Association ("CEPA") provides this 60-day Notice of violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the Air Blown Concrete facility located at 601 W. Delano Street in Elverta, California ("the Facility" or "the Site"). Pursuant to CWA §505(b) (33 U.S.C. §1365(a)), this 60-day Notice of violations ("Notice") is being sent to you as the responsible property owners, officers, operators or managers of the Facility, as well as to the U.S. Environmental Protection Agency ("EPA"), the U.S. Attorney General, the California State Water Resources Control Board ("SWRCB"), and the California Central Valley Regional Water Quality Control Board ("RWQCB").

CEPA is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California.

This Notice addresses the violations of the CWA and the terms of California's Statewide General Permit for Dischargers of Storm Water for Industrial Activities ("General Permit") arising from the unlawful discharge of pollutants from the Facility into Steelhead Creek, a tributary of the Sacramento River. The Sacramento River is included on the 303(d) list as impaired for mercury and unknown toxicities.

Air Blown Concrete (the "Discharger") is hereby placed on formal notice by CEPA that after the expiration of sixty (60) days from the date this Notice was delivered, CEPA will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations.

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

The Discharger filed a Notice of Intent ("NOI") on August 6, 2015, with respect to the Facility, agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 5S34I017576.

However, in its operations of the Facility, the Discharger has failed and is failing to comply with specific terms and conditions of the General Permit as described in Section II below. These violations are continuing in nature. Violations of the General Permit are violations of the CWA, specifically CWA § 301(a) and CWA § 402(p). Therefore, the Discharger has committed ongoing violations of the substantive and procedural requirements of CWA § 402(p) and of NPDES Permit No. CAS000001, State Water Resources Control Board Order 2014-0057-DWQ (the "General Permit") relating to industrial activities at the Facility.

II. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Facility Operations

Operations at the Air Blown Concrete Facility consist of the production, storage, recycling and distribution of concrete ready mix. Operations are covered under Standard Industrial Classification Code (SIC) 3273 – Ready mix Concrete.

Because the real property on which the Facility is located is subject to rain events, the range of pollutants discharged from the Facility and identified in this Notice discharge indirectly into Steelhead Creek and eventually to the Sacramento River.

B. Air Blown Concrete's Specific Violations

1. Failure to Collect and Analyze Storm Water Samples Pursuant to the General Permit

The Discharger has failed to provide the RWQCB with the minimum number of annual documented results of Facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

A Qualifying Storm Event (QSE) is a precipitation event that produces a discharge for at least one drainage area and is preceded by 48 hours with no discharge from any drainage area.

Furthermore, Section XI.B.11.a requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event. Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:

- a. Two storm water sample analyses for the time period July 1, 2015, through December 31, 2015. Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates: 11/2/15, 11/8/15, 11/15/15, 12/12/15, and 12/8/15.
- b. Two storm water sample analyses for the time period January 1, 2016, through June 30, 2016. Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates: Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates: 1/5/16, 1/13/16, 1/17/16, 1/22/16, 1/29/16, 2/18/16, 3/4/16, 3/10/16, 4/9/16, 4/22/16, 4/27/16, and 5/20/16; and
- c. One storm water sample analyses for the time period July 1, 2016, through December 31, 2016 (one sample was taken on December 15, 2016). Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates: 10/14/16, 10/27/16, 11/19/16, 11/26/16, 12/8/16, 12/15/16, and 12/23/16.

Further, the Discharger has not applied for or received a No Exposure Certification (NEC) for the Facility, pursuant to Section XVII, which provides as follows:

XVII. CONDITIONAL EXCLUSION - NO EXPOSURE CERTIFICATION (NEC)

A. Discharges composed entirely of storm water that has not been exposed to industrial activity are not industrial storm water discharges. Dischargers are conditionally excluded from complying with the SWPPP and monitoring requirements of this General Permit if all of the following conditions are met:

1. There is no exposure of Industrial Materials and Activities to rain, snow, snowmelt, and/or runoff;
2. All unauthorized NSWDS have been eliminated and all authorized NSWDS meet the conditions of Section IV;
3. The Discharger has certified and submitted via SMARTS PRDs for NEC coverage pursuant to the instructions in Section II.B.2; and,
4. The Discharger has satisfied all other requirements of this Section.

2. Failure to File Timely Annual Report

Pursuant to Section XVI.A of the General Permit, all Dischargers must certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year [July 1 through June 30 of each year], using the standardized format and checklists contained within the SMARTS database system.

Pursuant to Section XVI.B of the General Permit, the Annual Report must contain the following elements: (a) a Compliance Checklist that indicates whether the Discharger has complied with and addressed all applicable requirements of the General Permit; (b) an explanation for any non-compliance with requirements within the reporting year, as indicated in the Compliance Checklist; (c) an identification, including page numbers and/or sections, of all revisions made to the SWPPP within the reporting year; and (d) the date(s) of the required Annual Evaluation.

Air Blown Concrete has failed to date to upload an Annual Report into the SMARTS database system for the reporting year ending June 30, 2017, which was due to be filed no later than July 15, 2017.

CEPA Notes that the Discharger has previously received enforcement actions from the RWQCB for failure to file timely reports.

3. *Deficient BMP Implementation*

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices (“BMPs”) that comply with the Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

On November 8, 2013, Jacque Kelley from the Central Valley Regional Water Quality Control Board inspected the Facility. During that inspection, she noted several fluid spills on the ground outside of the vehicle maintenance facility and a white powder throughout the Facility. She also observed tracking from the Facility to West Elverta Road. Ms. Kelley informed the Discharger that the Facility needed to improve its housekeeping BMPs in the process area of the Facility and the area around the maintenance shop to address the powder and fluid spills.

A follow-up compliance inspection was performed on September 23, 2016, by Ms. Kelley, who detected at that time that there were still fluid spills on the ground outside of the vehicle maintenance facility and a dusty material on road surfaces throughout the Facility. Ms. Kelley also observed tracking from the Facility to El Rio Avenue and West Elverta Road and again noted that the processing area of the Facility and the area around the maintenance shop needed better housekeeping to address the dust and fluid spills.

As a result of the September 23, 2016, inspection, the Central Valley Regional Board issued a formal Notice of Violation dated November 21, 2016, to the Discharger for deficient BMP implementation and unauthorized storm water discharges (from a culvert pipe).

It is apparent that the Discharger failed to correct the BMP deficiencies noted by the Water Board inspector on November 8, 2013, and again on September 23, 2016. The Discharger’s continued parameter exceedances as listed in Section 4, below, are further evidence of its failure to adequately implement proper BMPs at the Facility.

4. *Discharges in Violation of the General Permit*

Section 402(p) of the Clean Water Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. Sections I.C.27 and III.A and B of the General Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Section XXI.A of the General Permit requires Dischargers to comply with effluent standards or prohibitions established under section CWA 307(a) for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions.

Sections III and VI of the General Permit prohibit storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment: cause or threaten to cause pollution, contamination, or nuisance; cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water; violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans) or statewide water quality control plans and policies; or contain hazardous substances equal to or in excess of a reportable quantity listed in 40 Code of Federal Regulations sections 110.6, 117.21, or 302.6.

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices (“BMPs”) that comply with the Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

The Discharger’s sampling and analysis results reported to the RWQCB confirm discharges of specific pollutants and materials other than storm water, in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

Table 2 of the General Permit (TABLE 2: *Parameter NAL Values, Test Methods, and Reporting Units*) outlines specific Annual and Instantaneous Numeric Action Levels (“NALs) for common parameters. A copy of Table 2 is included with this Notice.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations:

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	NAL Annual & Instantaneous Value (mg/L)
12-15-16	DP-1	TSS	440	100/400
12-15-16	DP-1	Iron	4.1	1.0
02-09-17	DP-1	TSS	110	100/400
02-09-17	DP-1	Iron	3.3	1.0

Based on the test results summarized above, the Discharger has both an annual average and an instantaneous numerical action limit (“NAL”) exceedance for Total Suspended Solids, and an annual average exceedance for Iron. These results elevated the Discharger to Level 1 Status on July 1, 2017, pursuant to Section XII.C – Exceedance Response Actions of the General Permit.

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

The Facility discharges to the Steelhead Creek Watershed, which is a tributary of the Sacramento River, both waters of the United States. All illegal discharges and activities described in this Notice occurred in close proximity to the above-identified waters. During storm events, discharges from the Facility are highly likely to discharge to said waters.

The RWQCB has determined that the watershed areas and affected waterways identified in this Notice are beneficially used for: water contact recreation, non-contact water recreation, fish and wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, navigation, and sport fishing. Information available to CEPA indicates the continuation of unlawful discharges of pollutants from the Facility into waters of the United States, specifically Steelhead Creek and the Sacramento River, in violation of the General Permit and the CWA. CEPA is informed and believes, and on such information and belief alleges, that these illegal discharges will continue to harm beneficial uses of the above-identified waters until the Discharger corrects the violations outlined in this Notice.

III. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entity responsible for the alleged violations is Air Blown Concrete (“the Discharger”) and its employees responsible for compliance with the CWA.

IV. THE LOCATION OF THE VIOLATIONS

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Air Blown Concrete’s permanent facility address of 601 W. Delano Street in Elverta, California, and includes the adjoining navigable waters of Steelhead Creek and the Sacramento River, respectively - both waters of the United States.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least November 8, 2013, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is the California Environmental Protection Association ("CEPA").

To ensure proper response to this Notice, all communications should be addressed as follows:

Xhavin Sinha, Attorney for
CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION
1645 Willow Street, #150
San Jose, CA 95125
Telephone: (408) 791-0432
Email: xsinha@sinha-law.com

VII. PENALTIES

The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside near and recreate in the Sacramento River. Members of CEPA use the Sacramento River for recreation, sports, fishing, swimming, boating, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4.

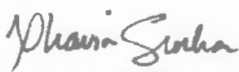
CEPA believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA or its counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations, however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



Xhavin Sinha
Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

Enclosure

TABLE 2 – Parameter NAL Values, Test Methods and Reporting Units

SINHA
LAW

60-Day Notice of Intent to Sue
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Copies to:

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Executive Director
State Water Resources Control Board
P.O. Box 100
Roseville, CA 95812-0100

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670

TABLE 2: Parameter NAL Values, Test Methods, and Reporting Units

PARAMETER	TEST METHOD	REPORTING UNITS	ANNUAL NAL	INSTANTANEOUS MAXIMUM NAL
pH*	See Section XI.C.2	pH units	N/A	Less than 6.0 Greater than 9.0
Suspended Solids (TSS)*, Total	SM 2540-D	mg/L	100	400
Oil & Grease (O&G)*, Total	EPA 1664A	mg/L	15	25
Zinc, Total (H)	EPA 200.8	mg/L	0.26**	
Copper, Total (H)	EPA 200.8	mg/L	0.0332**	
Cyanide, Total	SM 4500-CN C, D, or E	mg/L	0.022	
Lead, Total (H)	EPA 200.8	mg/L	0.262**	
Chemical Oxygen Demand (COD)	SM 5220C	mg/L	120	
Aluminum, Total	EPA 200.8	mg/L	0.75	
Iron, Total	EPA 200.7	mg/L	1.0	
Nitrate + Nitrite Nitrogen	SM 4500-NO3- E	mg/L as N	0.68	
Total Phosphorus	SM 4500-P B+E	mg/L as P	2.0	
Ammonia (as N)	SM 4500-NH3 B+ C or E	mg/L	2.14	
Magnesium, total	EPA 200.7	mg/L	0.064	
Arsenic, Total (c)	EPA 200.8	mg/L	0.15	
Cadmium, Total (H)	EPA 200.8	mg/L	0.0053**	
Nickel, Total (H)	EPA 200.8	mg/l	1.02**	
Mercury, Total	EPA 245.1	mg/L	0.0014	
Selenium, Total	EPA 200.8	mg/L	0.005	
Silver, Total (H)	EPA 200.8	mg/L	0.0183**	
Biochemical Oxygen Demand (BOD)	SM 5210B	mg/L	30	

SM – Standard Methods for the Examination of Water and Wastewater, 18th edition

EPA – U.S. EPA test methods

(H) – Hardness dependent

* Minimum parameters required by this General Permit

**The NAL is the highest value used by U.S. EPA based on their hardness table in the 2008 MSGP.